PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1607

SING FUELS PTE LTD.,

Plaintiff - Appellant,

v.

M/V LILA SHANGHAI (IMO 9541318), her engines, freights, apparel, appurtenances, tackle, etc., in rem,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Raymond A Jackson, Senior District Judge. (4:20-cv-00058-RAJ-LRL)

Argued: March 10, 2022 Decided: July 1, 2022

Before WILKINSON and DIAZ, Circuit Judges and FLOYD, Senior Circuit Judge.

Affirmed by published opinion. Senior Judge Floyd wrote the opinion in which Judge Wilkinson and Judge Diaz joined. Judge Wilkinson wrote a separate concurring opinion.

ARGUED: Briton Paul Sparkman, CHALOS & CO, P.C., Houston, Texas, for Appellant. Dustin Mitchell Paul, VANDEVENTER BLACK, LLP, Norfolk, Virginia, for Appellee. **ON BRIEF:** George M. Chalos, CHALOS & CO, P.C., Oyster Bay, New York, for Appellant. Edward J. Powers, VANDEVENTER BLACK, LLP, Norfolk, Virginia, for Appellee.

FLOYD, Senior Circuit Judge:

This dispute concerns whether an international trader of bunker fuel is entitled to a maritime lien on a vessel under the Commercial Instrument and Maritime Lien Act (CIMLA), 46 U.S.C. §§ 31301–43. Because, in this case, the bunker trader failed to show that it procured the vessel's fuel "on the order of the owner or a person authorized by the owner," § 31342(a), we affirm the district court's judgment denying the maritime lien.

I.

A.

Built in 2011, the M/V LILA SHANGHAI (the Vessel) is a gross tonnage bulk carrier owned by Autumn Harvest Maritime Co. (Autumn Harvest).[1] As the owner, Autumn Harvest time-chartered the Vessel to Bostomar Bulk Shipping Pte Ltd. (Bostomar) from April 25, 2019, to December 31, 2019. To memorialize their arrangement, Autumn Harvest and Bostomar entered into a maritime contract known as a time charter party.[2] The time charter party provided "[t]hat whilst on hire the Charterers shall provide and pay for

[1] Bulk carriers are used to transport large quantities of unpackaged cargo, including, but not limited to, coal, grain, and iron ore. Rosalie Balkin, *The International Maritime Organization and Maritime Security*, 30 Tul. Mar. L.J. 1, 33 (2006).

[2] "A time charter party is a contract between a vessel owner and charterer whereby the charterer pays the owner a fixed monthly sum for the use of the vessel during the period covered by the charter." *Trans-Asiatic Oil Ltd., S.A. v. Apex Oil Co.*, 804 F.2d 773, 775 n.3 (1st Cir. 1986). Also known more simply as "time charter," a time charter party also describes how "the charterer and owner share duties for the carriage of goods for a specified time." *Yeramex Int'l v. S.S. Tendo*, 595 F.2d 943, 946 (4th Cir. 1979). Time charter parties have "commercial objective[s]" and "divide the duties for navigation and seaworthiness of the ship and for the handling of cargo among the owner and charterer, with the expectation that both will benefit from the vessel's earnings." *Id.*

all the fuel except as otherwise agreed . . . ."[3] J.A. 792. It foreclosed charterers from unilaterally placing liens on the Vessel, expressly stating: "Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners in the vessel." J.A. 795. In the event of "any dispute" between Autumn Harvest and Bostomar about the Vessel and their respective obligations, the time charter party required "the matter in dispute . . . be referred to three persons at [sic] Singapore" for arbitration proceedings. J.A. 795.

After agreeing to those provisions, Bostomar sub-chartered the Vessel to Medmar Inc. (Medmar), a company in Greece known for chartering ships for international voyages.[4] On June 10, 2019, Medmar received the Vessel for an excursion from Argentina to India. While sailing to India, the Vessel needed bunkers to complete its journey.[5] Around June 28, 2019, Costas Mylonakis, an employee of Windrose Marine, contacted Appellant Sing Fuels Pte. Ltd. (Sing Fuels) to order the Vessel's bunkers.

A worldwide trader of bunkers, Sing Fuels's main office is in Singapore, but it also maintains offices in South Africa, Dubai, Greece, and the United Kingdom. In typical transactions, such as here, a potential customer contacts a salesperson with Sing Fuels and asks about a delivery of bunkers to a given port. After receiving the request, Sing Fuels's

[3] The parties only included a "working copy" of the time charter party within the record, and this "working copy" is not memorialized between Autumn Harvest and Bostomar. J.A. 790–835. In any event, the parties do not contest the existence of a binding time charter party, nor do they disagree over the contents of the "working copy."
[4] The record does not contain any express agreement between Medmar and Bostomar.
[5] Within the maritime industry, "bunkers" is a term referring to "marine fuels of various grades and specifications." J.A. 446.

salesperson then contacts physical suppliers who can deliver the bunkers, obtains multiple prices for the customer's consideration, and eventually finds an agreeable price. Sing Fuels then issues a sales and purchase order for both the customer and the physical supplier.

On July 1, 2019, Sing Fuels transmitted its Sales Order Confirmation, which included the Terms and Conditions of Sale for Marine Fuels 2017 (bunker contract), only to Mylonakis's e-mail address affiliated with Windrose Marine. Within the e-mail, which did not copy Medmar, Sing Fuels stated: "MERE RECEIPT OF THIS CONFIRMATION SIGNIFIES ACCEPTANCE OF RESPONSIBILITY FOR PAYMENT OF OUR BUNKER INVOICE BY EACH AND ALL OF THEM." J.A. 522. The e-mail also asked Mylonakis to obtain Medmar's signature and company stamp on the Sales Order Confirmation, which billed the request for bunkers to an account associated with Medmar.[6] Mylonakis never returned any memorialized document from Medmar. Sing Fuels exclusively communicated with Mylonakis for this transaction, considered Mylonakis to be Medmar's fuel broker, and never spoke directly with Medmar. Mylonakis also never communicated with Medmar, he conferred instead with a mysterious entity called M.A.C. Shipping.

When the Vessel reached Port Elizabeth, South Africa, it physically received bunkers on two occasions in July (the July bunkers) from South African Marine Fuels, a subsidiary of Addax Energy SA. First, on July 10, 2019, the Vessel received 595.888

[6] The record does not contain a signed or company-stamped document from either Mylonakis or Medmar because, despite its request, Sing Fuels never received one.

metric tons, 380 centistokes (cst), of bunkers. Second, on July 12, 2019, the Vessel received 459.038 metric tons, 380 cst, of bunkers. The Vessel received, in total, 1,049.296 metric tons, 380 cst, of bunkers, amounting to $532,312.48 in fuel. *See* J.A. 551 (tax invoice for the July bunkers). For both deliveries, either the Vessel's Master or Chief Engineer indicated receipt of the bunkers. *See* J.A. 549–50 (Bunker Delivery Notes). All the July bunkers were consumed by the Vessel.

Medmar returned the Vessel to Bostomar on August 12, 2019, with Sing Fuels still awaiting payment for the July bunkers. By October 2019, payment for the July bunkers was still outstanding, so Sing Fuels sent Autumn Harvest a notice of nonpayment, requesting an immediate disbursement in the amount of $540,527.71. *See* J.A. 552–54 (notice to Autumn Harvest requesting payment for the July bunkers). In February 2020, Sing Fuels formally met with Autumn Harvest to discuss the payment for the July bunkers. Autumn Harvest refused to pay. In the wake of the collapsed negotiations, Sing Fuels paid the physical supplier of the July bunkers.

According to Sing Fuels, over the course of 2019, it engaged in eight transactions with Medmar and always obtained timely payments, including for a delivery of bunkers totaling $300,000.00 in May 2019.[7] Yet, Sing Fuels never identified what corporate entity or who within that entity paid those bills for Medmar. Without knowing where to turn after

[7] Besides testimony from one of Sing Fuels's witnesses, the record does not contain documentary evidence of these prior transactions, and Sing Fuels never proffered any such evidence at its bench trial. At oral argument, Sing Fuels's counsel confirmed that such documentary evidence was never introduced, let alone admitted, at trial.

Medmar's payment default on the July bunkers, and its discussions with Autumn Harvest exhausted, Sing Fuels started tracking the Vessel on a regular basis.[8] Even though Sing Fuels had opportunities to arrest the Vessel at other ports, including in the United Kingdom and India, it declined to do so. Instead, it waited until the Vessel docked in the United States and then availed itself of our federal courts to recoup payment for the July bunkers.

B.

Pursuing an action in rem, Sing Fuels filed its Verified Complaint against the Vessel in the United States District Court for the Eastern District of Virginia on April 22, 2020. It sought two forms of relief against the Vessel. First, moving under Rule C of the Supplemental Rules of Admiralty and Maritime Claims and Asset Forfeiture Actions, Sing Fuels requested the Vessel's arrest at port in the Eastern District of Virginia. Second, upon a successful arrest, it wanted a maritime lien placed on the Vessel pursuant to the CIMLA, 46 U.S.C. §§ 31301–43, for the amount owed on the July bunkers, $532,312.48.

On April 24, 2020, the district court issued a warrant for the Vessel's arrest upon its arrival in Virginia. The United States Marshals Service arrested and seized the Vessel, with the National Maritime Services (NMS) serving as the Vessel's substitute custodian. Four days later, on April 28, 2020, Autumn Harvest posted its Letter of Undertaking to serve as substitute security, allowing it to stand in the Vessel's place. After approving

[8] The record does not suggest that Sing Fuels ever sought payment directly from Medmar.

Autumn Harvest as substitute security, the court ordered NMS to release the Vessel, and Autumn Harvest filed its Answer to the Verified Complaint on June 1, 2020.[9]

When settlement discussions failed, a bench trial ensued. With the parties stipulating to certain facts and exhibits, the district court held its one-day trial on February 23, 2021. Sing Fuels only proffered two witnesses, both of whom it employed: (1) Ulrich Rasmussen, a vice president of credit risk, and (2) Stella Lykouri, a senior bunker trader. *See* J.A. 446 (Rasmussen's testimony); J.A. 502 (Lykouri's testimony); *see also* Witness List, *Sing Fuels Pte. Ltd. v. M/V Lila Shanghai*, 534 F. Supp. 3d 551 (E.D. Va. 2021) (No. 4:20-cv-00058-RAJ-LRL), ECF No. 41-1. Sing Fuels never called Mylonakis to testify, nor did it call anyone associated with Medmar, Windrose Marine, or M.A.C. Shipping.[10] *See* Witness List, *Sing Fuels Pte. Ltd.*, 534 F. Supp. 3d 551 (No. 4:20-cv-00058-RAJ-LRL), ECF No. 41-1. In terms of exhibits, Sing Fuels submitted the bunker contract, bunker delivery notes, an invoice, and four e-mails, all involving the July bunkers, into evidence. Exhibit List, *Sing Fuels Pte. Ltd.*, 534 F. Supp. 3d 551 (No. 4:20-cv-00058-RAJ-LRL), ECF No. 41-2. It did not provide any other documents showing prior transactions involving Medmar, Mylonakis, Windrose Marine, or M.A.C. Shipping. *See id.* At the trial's conclusion, the court ordered the parties to submit post-trial briefs within thirty days.

[9] Neither Medmar, Windrose Marine, nor M.A.C. Shipping were ever made parties to the action.

[10] The district court's Final Pretrial Order lists Mylonakis as a fact witness for Sing Fuels, however, Sing Fuels never called him as a witness for the bench trial even though the court conditionally overruled Autumn Harvest's objection to his testimony. *See* Final Pretrial Order, *Sing Fuels Pte. Ltd.*, 534 F. Supp. 3d 551 (No. 4:20-cv-00058-RAJ-LRL), ECF No. 31.

After receiving the parties' post-trial briefs, the district court issued its order and opinion in favor of the Vessel on April 20, 2021, entering a judgment that same day. *Sing Fuels Pte. Ltd.*, 534 F. Supp. 3d at 555. Making findings of fact and conclusions of law, the court first determined that United States law, as opposed to Singapore law, governed the parties' dispute. *Id.* at 563–66. Applying United States law, the court then turned to the existence of a maritime lien and whether equitable laches barred Sing Fuels's action. *Id.* at 566–73.

The court first held that Mylonakis did not possess any actual, apparent, or presumed authority to hold the Vessel liable for the July bunkers. *Id.* at 566–69. Regarding actual authority, the court determined that the time charter party precluded Medmar from placing liens on the Vessel. *Id.* at 566–67. As for apparent or presumed authority, the court held the record, at best, showed a "tenuous relationship" between Mylonakis and Medmar, and "no documentation" demonstrated Mylonakis as an agent for Autumn Harvest, Bostomar, or Medmar. *Id.* at 567–68. Additionally, the court found that Mylonakis ordered the bunkers for M.A.C. Shipping, not Medmar, with nothing indicating whether those two entities were related. *Id.* As an alternative ground for resolution, the court next held that the doctrine of equitable laches barred Sing Fuels's suit because (1) Sing Fuels never presented a "satisfactory excuse" for its delay in bringing the action, and (2) the Vessel would be unfairly prejudiced if the action continued. *Id.* at 569–73. Accordingly, relying on both distinct conclusions, the district court ruled in the Vessel's favor.

Sing Fuels timely appeals the district court's judgment, challenging both the maritime lien's existence and application of equitable laches as a bar to suit. We have jurisdiction under 28 U.S.C. § 1291.

II.

"We review a judgment following a bench trial under a mixed standard of review—factual findings may be reversed only if clearly erroneous, while conclusions of law, including contract construction, are examined de novo." *Roanoke Cement Co., L.L.C. v. Falk Corp.*, 413 F.3d 431, 433 (4th Cir. 2005) (citations omitted). And we will "not disturb the district court's factual findings if they are 'plausible in light of the record viewed in its entirety.'" *Heyer v. U.S. Bureau of Prisons*, 984 F.3d 347, 355 (4th Cir. 2021) (quoting *Anderson v. City of Bessemer*, 470 U.S. 564, 574 (1985)).

"But while clear error review is deferential, it is not toothless." *Butts v. United States*, 930 F.3d 234, 238 (4th Cir. 2019) (citing *United States v. Wooden*, 693 F.3d 440, 452 (4th Cir. 2012)). "Factual findings made by the district court are not 'so sacrosanct as to evade review,' and this Court may reverse those findings when definitely and firmly convinced they are mistaken after a review of the full record." *Heyer*, 984 F.3d at 355 (quoting *Jiminez v. Mary Washington Coll.*, 57 F.3d 369, 379 (4th Cir. 1995)). There are four grounds permitting us to reverse factual findings: "(1) they were derived under an incorrect legal standard, (2) they 'are not supported by substantial evidence,' (3) they were made while ignoring 'substantial evidence' supporting the opposite conclusion, and (4)

they are 'contrary to the clear weight of the evidence.'" *Id.* (quoting *Jiminez*, 57 F.3d at 379).

III.

A.

Before we address Sing Fuels's arguments about its entitlement to a maritime lien, we briefly consider the threshold issue of which country's laws apply to this case. *World Fuel Servs. Trading, DMCC v. Hebei Prince Shipping Co., Ltd.*, 783 F.3d 507, 513 (4th Cir. 2015). Choice-of-law determinations are questions of law that we review de novo. *Richard v. Anadarko Petroleum Corp.*, 850 F.3d 701, 707 (5th Cir. 2017); *Dresdner Bank AG v. M/V Olympia Voyager*, 463 F.3d 1210, 1214 (11th Cir. 2006).

"In the absence of a contractual choice-of-law clause, federal courts sitting in admiralty apply federal maritime choice-of-law principles derived from the Supreme Court's decision in *Lauritzen v. Larsen*, 345 U.S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953), and its progeny." *Chan v. Soc'y of Expeditions, Inc.*, 123 F.3d 1287, 1296 (9th Cir. 1997) (citations omitted). "Where the parties have specified in their contract which law should apply to their transaction, however, 'admiralty courts will generally give effect to that choice.'" *Triton Marine Fuels Ltd., S.A. v. M/V Pac. Chukotka*, 575 F.3d 409, 413 (4th Cir. 2009) (quoting *Hawkspere Shipping Co., Ltd. v. Intamex, S.A.*, 330 F.3d 225, 233 (4th Cir. 2003)). Unless there is a compelling reason of public policy, this Court will enforce a "freely negotiated choice-of-law clause in a maritime contract . . . ." *Id.* (citations omitted).

Assuming its validity as the parties have, the bunker contract—purportedly for Medmar but only transmitted to Mylonakis—contains a choice-of-law provision permitting Sing Fuels to choose any jurisdiction that it wishes in order to obtain a maritime lien. Clause 23.1 provides: "*Without derogation from Clause 23.7*, the Contract shall be governed by and construed in accordance with the laws of Singapore." J.A. 546 (emphasis added). In turn, and in full, Clause 23.7 clearly states:

> Notwithstanding the Clauses above, the Seller is free to bring suit in any jurisdiction and shall be entitled to avail itself of all remedies under maritime or other law to obtain jurisdiction and/or security for its claims against Buyer, its agents or affiliates, the Vessel, the Owners and charterers and any of their respective agents, servants or assigns, including but not limited to vessel arrest and attachment procedures, similar laws, rules or statutes in any jurisdiction. *Further, the Seller may apply and benefit from any law in any jurisdiction which grants the Seller a maritime lien* and/or right to arrest the Vessel and the parties' rights and remedies under the Contract shall at the Seller's election be resolved by that law to the exclusion of Singapore law.

J.A. 547 (emphasis added). Clause 23.7 complements clause 12.2, the latter of which discusses liens and guarantees: "The Seller . . . shall, among other things, *enjoy the full benefit of local legislation granting the Seller a maritime lien on the Vessel* and/or providing for the right to arrest the Vessel." J.A. 535 (emphasis added). Clause 12.2 goes on, explaining that "[n]othing in the Contract shall be construed to limit the rights and/or legal remedies that the Seller may enjoy against the Vessel or the Buyer in any jurisdiction." J.A. 535. At first blush, clauses 12.2 and 23.7 provide Sing Fuels with a right to seek a maritime lien in the jurisdiction of its choosing because, under those terms, it can expressly (1) "apply and benefit from any law in any jurisdiction which grants [it] a

maritime lien," and (2) "enjoy the full benefit of local legislation granting [it] a maritime lien on the Vessel . . . ." J.A. 535, 547.

Confronted with these unfavorable provisions and completely ignoring clause 12.2, Autumn Harvest argues that clause 23.7 is invalid and unenforceable under Singapore law because that jurisdiction "does not allow these 'floating' choice of law provisions . . . ." Autumn Harvest's Resp. Br. 39. Without clause 23.7, according to Autumn Harvest, there is "no basis" to apply United States law, and Singapore, whose laws would then apply, does not recognize maritime liens. *Id.* at 37, 40; *see also* Sing Fuels's Reply Br. 19. Although it prefers the adoption of United States law, Sing Fuels maintains that clause 23.7 is valid under Singapore law when characterized as a "variation clause," and, even if clause 23.7 is rendered null, Singapore law still requires we employ United States law as the lex fori.[11] Sing Fuels's Reply Br. 19–21.

In the context of maritime liens, our Court has only addressed the enforceability of a choice-of-law provision containing an explicit reference to United States law and not to "any law in any jurisdiction" or "local legislation." *See Triton Marine*, 575 F.3d at 412–16. Some federal courts have enforced contractual language authorizing parties to enforce maritime liens in "any jurisdiction in accordance with local law in such jurisdiction." *See Liverpool & London S.S. Prot. & Indem. Ass'n Ltd. v. Queen of Leman MV*, 296 F.3d 350, 353 (5th Cir. 2002); *cf. Bominflot, Inc. v. M/V Henrich S*, 465 F.3d 144, 147–48 (4th Cir. 2006) (applying English law when the contracting parties *did not* specify any other law

[11] Lex fori refers to "[t]he law of the forum" or, in other words, "the law of the jurisdiction where the case is pending." *Lex Fori*, Black's Law Dictionary (11th ed. 2019).

within the maritime agreement). To be sure, there is little case law ruling on the enforceability of choice-of-law provisions that permit parties to obtain maritime liens under "any jurisdiction's" laws, let alone under Singapore law.

But fortunately, we need not delve into the parties' complex arguments about the choice-of-law question or formally decide whether Singapore law prohibits clause 23.7, precluding its enforcement. Generally, "when the resolution of a choice-of-law determination would not alter the disposition of a legal question, a reviewing court need not decide which body of law controls." *Okmyansky v. Herbalife Int'l of Am., Inc.*, 415 F.3d 154, 158 (1st Cir. 2005) (citations omitted); *see also Int'l Adm'rs, Inc. v. Life Ins. Co. of N. Am.*, 753 F.2d 1373, 1376 n.4 (7th Cir. 1985) ("Conflicts rules are appealed to only when a difference in law will make a difference to the outcome." (citation omitted)). In *World Fuel Services Trading, DMCC v. Hebei Prince Shipping Co., Ltd.*, we agreed with a district court that a choice-of-law inquiry, involving Greek law and United States law, was unwarranted when either law's exercise "[made] no discernible difference to the relevant analysis in the case at bar." 783 F.3d at 514–15 (citations omitted).

In the case at hand, Singapore law prohibits maritime liens on vessels as a means to obtain payment for bunkers.[12] And as we conclude below, the specific facts of this case

[12] Some federal courts insist: "Singapore law does not recognize maritime liens." *World Fuel Servs. Singapore Pte, Ltd. v. Bulk Juliana M/V*, 822 F.3d 766, 772 (5th Cir. 2016) (citing *Sembawang Shipyard, Ltd. v. Charger, Inc.*, 955 F.2d 983, 988 (5th Cir. 1992)). Both parties also believe this is the law of Singapore. *See* Autumn Harvest's Opening Br. 37; Sing Fuels's Reply Br. 19. But we believe that Singapore law is more nuanced. Singapore has traditionally recognized maritime liens but only for "salvage, seamen's wages, master's wages [and] disbursements[,] and liabilities and damage." J.A. 704 (Continued)

do not permit a maritime lien under United States law. *See infra* Part III.B. So regardless of whether we follow Singapore law or United States law, a maritime lien is not permitted, and the outcome is the same. We therefore follow the district court's sound approach and forge ahead with applying United States law regarding the existence of a maritime lien on the Vessel.[13] *See Hebei Prince Shipping*, 783 F.3d at 514–15 (following a district court's employ of Greek law after similarly concluding that the choice-of-law question did not need resolution).

B.

The primary dispute between the parties is whether the district court properly denied Sing Fuels's request for a maritime lien under the CIMLA. Sing Fuels stresses that it provided the July bunkers only because Mylonakis "act[ed] with the apparent authority and as agent [for] Medmar . . . ." Sing Fuels's Opening Br. 25.[14] Autumn Harvest maintains

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(quoting *The 'Halcyon Isle'*, [1977–1978] SLR(R) 11 (Sing.)); *see also Bankers Tr. Int'l Ltd. v. Todd Shipyards Corp.* [1981] AC 221 (PC) (appeal taken from Sing.); 17(2) Halsbury's Laws of Singapore ¶ 220.0168 (2020). However, maritime liens for a ship's liabilities for goods and services, typically called bottomry, are now obsolete. *Bankers Tr. Int'l Ltd. v. Todd Shipyards Corp.* [1981] AC 221 (PC) (appeal taken from Sing.). Thus, under Singapore law, payment for bunkers is not one of the explicit categories where maritime liens are available. Sing Fuels never suggests otherwise.

[13] We further note that Autumn Harvest's briefing primarily rests on United States law, leaving the choice-of-law question as an alternative ground for affirming the district court. Autumn Harvest's Resp. Br. 36–41. And at oral argument, Autumn Harvest focused on United States law and did not press for Singapore law at all.

[14] To the extent Sing Fuels attempts to rely on any other agency theories for its maritime lien, those were never briefed and are now waived. *See Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by failing to present (Continued)

that the determination of an agency relationship is a question of fact under maritime law, the district court did not clearly err in declining to find such a relationship, and Sing Fuels failed to prove its case. *See* Autumn Harvest's Resp. Br. 14–23. On the limited facts before us, Autumn Harvest's arguments must carry the day. Sing Fuels failed to carry its evidentiary burden, and we hold that the district court's agency ruling is not clearly erroneous.

1.

"A maritime lien 'is a right in the vessel' that entitles a vessel's creditor to have the vessel sold in order to satisfy an outstanding debt." *Addax Energy SA v. M/V Yasa H. Mulla*, 987 F.3d 80, 86 (4th Cir. 2021) (quoting *Itel Containers Int'l Corp. v. Atlanttrafik Express Serv. Ltd.*, 982 F.2d 765, 768 (2d Cir. 1992)). The United States "allow[s] for broader use and enforcement of maritime liens, including the creation of a statutory right to a maritime lien for necessaries . . . ." *Bominflot*, 465 F.3d at 147 (citations omitted). The CIMLA grants parties a statutory avenue to obtain maritime liens:

> (a) . . . [A] person providing necessaries to a vessel on the order of the owner or a person authorized by the owner—
>
> (1) has a maritime lien on the vessel;
> (2) may bring a civil action in rem to enforce the lien; and
> (3) is not required to allege or prove in the action that credit was given to the vessel.

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it in its opening brief . . . ." (citation omitted)). Accordingly, we only concern ourselves with apparent agency.

46 U.S.C. § 31342(a)(1)–(3). So to prove the existence of a maritime lien under the CIMLA, a party must show the following: (1) "a person providing necessaries"; (2) "to a vessel"; and (3) "on the order of the owner or a person authorized by the owner." § 31342(a); *see also ING Bank N.V. v. Bomin Bunker Oil Corp.*, 953 F.3d 390, 393–94 (5th Cir. 2020) (same).

The CIMLA further states that certain "persons" are "presumed" to possess authority to obtain a vessel's necessaries, including:

> (1) the owner;
> (2) the master;
> (3) a person entrusted with the management of the vessel at the port of supply; or
> (4) an officer or agent appointed by—
> (A) the owner;
> (B) a charterer;
> (C) an owner pro hac vice; or
> (D) an agreed buyer in possession of the vessel.

§ 31341(a)(1)–(4). Section 31341's presumption is not "conclusive" as to a maritime lien's existence because a party can rebut the statutory presumption with competent evidence. *See Lake Charles Stevedores, Inc. v. Professor Vladimir Popov MV*, 199 F.3d 220, 225 (5th Cir. 1999) (citations omitted).

There is no dispute that Sing Fuels was "a person providing necessaries" and those "necessaries" were provided "to a vessel." *Compare* Sing Fuels's Opening Br. 23–24 (arguing Sing Fuels satisfied the first two requirements for a maritime lien), *with* Autumn Harvest's Resp. Br. 13 ("There is no dispute as to the first two factors."). We agree those threshold requirements are fulfilled. Bunkers qualify as "necessaries" under § 31342(a). *See ING Bank N.V. v. M/V Temara*, 892 F.3d 511, 519 (2d Cir. 2018) ("'Necessaries'

include, among other things, bunkers." (citations omitted)). And Sing Fuels is "a person providing necessaries to a vessel" because it specifically ordered the July bunkers for the Vessel in its capacity as a bunker trader. *Id.* ("A maritime lien may be asserted by an entity when that entity contracts with a vessel's owner, charterer, or other statutorily-authorized person for the provision of necessaries and the necessaries are supplied pursuant to that agreement even if by another party."). Accordingly, the sole question before this Court is whether Sing Fuels acted "on the order of the owner or a person authorized by the owner." § 31342(a).

2.

At the outset, we first note that there is no argument or record evidence indicating that Sing Fuels acted "on the order of the owner" when ordering the July bunkers. *Id.* During the bench trial, Rasmussen expressly conceded that Sing Fuels never had any communication with Autumn Harvest, the Vessel's owner, before ordering and supplying the July bunkers. We find the following exchange instructive:

> Q. But you chose never to contact my client, Autumn Harvest, regarding these bunkers, correct?
> [Rasmussen]. Autumn Harvest wasn't -- wasn't our customer. MedMar was our customer.
> . . .
> Q. You had no communication of any kind with [Autumn Harvest] before the bunkers were supplied?
> [Rasmussen]. Correct.
> Q. And you've got no evidence that [Autumn Harvest] ever received a copy of any Sales Confirmation before the bunkers were supplied, correct?
> [Rasmussen]. Correct.
> Q. You've got no evidence that [Autumn Harvest] ever received a copy of your Terms and Conditions before you supplied the bunkers, correct?

> [Rasmussen]. Correct.
> Q. To your knowledge, Mr. Mylonakis never communicated with [Autumn Harvest] regarding these bunkers, did he?
> [Rasmussen]. Not to my knowledge.

J.A. 480–81. These concessions make clear that Sing Fuels never ordered the July bunkers "on the order of the owner," Autumn Harvest, as required by the CIMLA. § 31342(a). Autumn Harvest never directly requested the July bunkers from Sing Fuels, and nor did it ever contract with Sing Fuels, so nothing was "on the order of the owner" under § 31342(a). *Cf. Bunker Holdings Ltd. v. Yang Ming Liberia Corp.*, 906 F.3d 843, 845 (9th Cir. 2018) (holding that an order for bunkers was not provided "on the order of the owner" when the vessel's owner only contracted with a fuel broker and not with the physical supplier seeking the maritime lien).

Because Sing Fuels did not provide the July bunkers at Autumn Harvest's request, it is only entitled to a maritime lien if it can show it ordered them "on the order of . . . a person authorized by the owner." § 31342(a). Under these circumstances, Sing Fuels needed to demonstrate that either Mylonakis or Medmar is "a person authorized by the owner," Autumn Harvest. *Id.* It failed to do so. According to Sing Fuels's own theories at trial, Mylonakis was supposedly a fuel broker for Medmar, not Autumn Harvest. *See* J.A. 453 ("This message was sent to Costas Mylonakis, who is the fuel broker for MedMar."); J.A. 472 ("Mr. Mylonakis was the broker for MedMar and acting as their agent."); *see also* J.A. 480–81. Mylonakis *may* have been authorized to procure the July bunkers by Medmar, but he clearly was not permitted to do so by Autumn Harvest, the Vessel's owner.

As for Medmar, not only did none of its representatives testify at trial, Sing Fuels submitted no evidence suggesting that Autumn Harvest authorized Medmar, as its agent, to order the Vessel's July bunkers. *See Bunker Holdings*, 906 F.3d at 845 (finding that a bunker trader was not acting as a vessel owner's agent when it only contracted with a physical supplier to provide bunkers for a vessel and never submitted evidence to the contrary); *see also Valero Mktg. & Supply Co. v. M/V Almi Sun*, 893 F.3d 290, 295 (5th Cir. 2018) (same). This is unsurprising because Medmar, as a sub-charterer, had no relationship with Autumn Harvest.[15] *See Barcliff, LLC v. M/V Deep Blue*, 876 F.3d 1063, 1071 (11th Cir. 2017) ("[T]he subcontractor is merely a contractual counterparty of the general contractor; it has no relationship with the owner."). In sum, Sing Fuels simply failed to show how it acted "on the order of the owner or a person authorized by the owner" under the CIMLA. § 31342(a).

3.

As opposed to grappling with the CIMLA's explicit requirement under § 31342(a), Sing Fuels rests its entitlement to a maritime lien entirely on Mylonakis being Medmar's

[15] As an appellate court, we review the district court's decision based upon the record before it below. Fed. R. App. P. 10(a); *Fassett v. Delta Kappa Epsilon (New York)*, 807 F.2d 1150, 1165 (3d Cir. 1986). In the record before us, there is only a contract between Autumn Harvest and Bostomar, which contains a clause expressly prohibiting Bostomar and its agents from placing any liens on the Vessel. *See* J.A. 795. Presumably, Medmar contracted with Bostomar to sub-charter the Vessel, but the contents of that contract, if it exists, are not in the record. Likewise, there is no contract in the record between Autumn Harvest and Medmar, which further suggests Medmar is not "a person authorized" by Autumn Harvest. § 31342(a).

apparent agent, which would trigger the CIMLA's statutory presumption and grant Mylonakis tentative authority to bind the Vessel. As a charterer, Medmar's agents have presumptive authority to procure necessaries on behalf of the Vessel. § 31341(a)(4). But under the CIMLA's terms, the rebuttable presumption of authority to bind a vessel is only applicable if an agency relationship indeed exists, including one involving apparent authority. *See id.*; *see also Lake Charles Stevedores*, 199 F.3d at 226–27 (analyzing whether usual agency theories applied to trigger the CIMLA's statutory presumption); *Crescent City Marine, Inc. v. M/V Nunki*, 20 F.3d 665, 668–69 (5th Cir. 1994) (similar).

We thus begin with the well-known principles of apparent authority. "Apparent authority results from a principal's manifestation of an agent's authority to a third party, regardless of the actual understanding between the principal and agent." *Auvil v. Grafton Homes, Inc.*, 92 F.3d 226, 230 (4th Cir. 1996) (citations omitted). An agent can bind a principal through apparent authority but only when the principal, by her acts or omissions, causes a third party to rely on the agent's authority to act on the principal's behalf. *Id.* The third party must exercise "good faith" and "reasonable prudence" in their reliance upon the apparent agent. *Id.* "From the well-established tenet that an agent cannot create his own authority to represent a principal, it follows that an agent's statements that he has such authority cannot, without more, entitle a third party to rely on his agency." *Id.* (citations omitted) (cleaned up). This is for good reason: "Apparent authority is present only when a third party's belief is traceable to manifestations of the principal." Restatement (Third) of Agency § 3.03 cmt. b (Am. L. Inst. 2006).

We have previously noted that agency findings involve "factual matters" lying within the jury's province. *Krakauer v. Dish Network, L.L.C.*, 925 F.3d 643, 660 (4th Cir. 2019) (quoting *Metco Prods., Inc., v. Nat'l Lab. Rels. Bd.*, 884 F.2d 156, 159 (4th Cir. 1989)). Because they boil down to the facts, we review findings of apparent agency—even in the admiralty context—under a clearly erroneous standard. *S.C. State Ports Auth. v. M/V Tyson Lykes*, 67 F.3d 59, 61 (4th Cir. 1995); *Famous Knitwear Corp. v. Drug Fair, Inc.*, 493 F.2d 251, 252 (4th Cir. 1974) ("The finding of apparent authority, including as it must, the reasonableness of Feder's reliance on Drug Fair's manifestations in that regard, is an 'ultimate factual inference' and is to be reviewed under the 'clearly erroneous standard' . . . ." (citations omitted)); *see also Garanti Finansal Kiralama A.S. v. Aqua Marine & Trading Inc.*, 697 F.3d 59, 71 (2d Cir. 2012) ("[T]he existence of either actual or apparent authority is a question of fact, revolving as it does around the actions by, and relationships between, principal, agent, and third parties." (citations omitted)); *Lake Charles Stevedores*, 199 F.3d at 226 (similar); *Equilease Corp. v. M/V Sampson*, 756 F.2d 357, 363 (5th Cir. 1985) (similar).

When analyzing apparent agency, the district court concluded that "Mylonakis, the fuel broker, was not the agent for MedMar Inc., and, thus, could not establish the maritime line [sic] on behalf of Plaintiff." *Sing Fuels Pte. Ltd.*, 534 F. Supp. 3d at 567. To reach that conclusion, the court first considered Sing Fuels's argument that Medmar's alleged payment for bunkers in May 2019 established Mylonakis's apparent authority to bind the Vessel. *Id.* It found Sing Fuels's position "undercut" because Rasmussen later admitted

that he did not know whether or not Medmar even paid for the May 2019 transaction.[16] *Id.*; *see also* J.A. 500 (Rasmussen's concession about the May 2019 bunkers). This finding is not clearly erroneous by any means.

As conceded at oral argument, Sing Fuels never proffered any documents establishing any of its prior dealings with Mylonakis or Medmar, including for the alleged fuel transaction in May 2019. So there is no "substantial evidence" that the district court could have relied upon to either rescue Rasmussen's credibility or support an "opposite conclusion" of the prior transactions justifying apparent authority with respect to the July 2019 bunkers. *Heyer*, 984 F.3d at 355 (quoting *Jiminez*, 57 F.3d at 379). The district court's conclusion about Mylonakis's apparent authority partly rests upon Rasmussen's credibility, and "[w]here a district court's factual finding in a bench trial is based upon an assessment of witness credibility, such finding 'is deserving of the highest degree of appellate deference.'" *F.C. Wheat Maritime Corp. v. United States*, 663 F.3d 714, 723 (4th Cir. 2011) (citation omitted). We see no good reason to disturb that finding here, particularly when Sing Fuels never points to other evidence making it clearly erroneous.

But the district court was not only concerned with Rasmussen's credibility regarding the previous bunker transaction, it also expressly considered the following facts when it rejected Sing Fuels's reliance on Mylonakis's apparent agency: (1) Sing Fuels only

[16] During direct examination, Rasmussen expressly testified that Medmar paid for the May 2019 transaction, and he reiterated that belief when he was later questioned. *See* J.A. 451–52, 498. However, during recross examination, Rasmussen then conceded that he did not know who actually paid for the May 2019 transaction at all. *See* J.A. 500.

communicated with Mylonakis and never spoke with Medmar about the July bunkers; (2) "no documentation" suggested an agency relationship between Mylonakis and Medmar; (3) Mylonakis never spoke with Medmar but revealed his exclusive dealings with M.A.C. Shipping to Rasmussen; and (4) Sing Fuels failed to "confirm the relationship" between M.A.C. Shipping and Medmar. *Sing Fuels Pte. Ltd.*, 534 F. Supp. 3d at 567–68. Based on those facts, the court arrived at the reasoned conclusion that Sing Fuels failed to demonstrate that Mylonakis was Medmar's apparent agent, precluding him from having any connection to the Vessel.[17] *Id.* at 568. This is not a clearly erroneous finding because it is "plausible in light of the record viewed in its entirety." *Heyer*, 984 F.3d at 355 (quoting *City of Bessemer*, 470 U.S. at 574).

Besides perplexing testimony from Rasmussen,[18] evidence further showed Sing Fuels transmitted the Sales Order Confirmation to Mylonakis at his account associated with

[17] At one point, Sing Fuels's briefing shifts focus from Mylonakis to Medmar, positing that "the lien *was established* simply through the order of bunkers by Medmar (as subcharterer) which were in fact delivered to the Vessel by Sing Fuels." Sing Fuels's Opening Br. 31 (emphasis added). That is not the law. Section 31341(a)(4)(B) only provides a charterer's "officer or agent" with presumptive authority, albeit rebuttable, to procure a vessel's necessaries. *See Hebei Prince Shipping*, 783 F.3d at 521–22 (noting that § 31341(a)'s presumption is rebuttable). And, in this case, Sing Fuels rebuts itself by conceding that it never communicated with any of Medmar's officers about obtaining the July bunkers. *See* J.A. 472–74. It exclusively communicated with who it believed was Medmar's agent, Mylonakis. *Id.* So § 31341(a)'s presumption turns on whether Mylonakis is an agent.

[18] Rasmussen testified that he "believe[d]" M.A.C. Shipping and Medmar were "two of the same" based upon a representation from Mylonakis, but he also admitted that he never reviewed any corporate documents about M.A.C Shipping or asked Medmar whether it was related to M.A.C. Shipping. *See* J.A. 473, 478. We view this as going to the weight of Rasmussen's testimony. *Fed. Trade Comm'n v. Ross*, 743 F.3d 886, 894 (4th Cir. 2014) ("In cases in which a district court's factual findings turn on assessments of witness (Continued)

Windrose Marine, his employer, and not to Medmar directly. Moreover, Sing Fuels emphasized that it *only* worked with Mylonakis for procuring the July bunkers, and never spoke with Medmar. It is hornbook law that Mylonakis cannot deem himself Medmar's apparent agent without any manifestation coming from Medmar. *See Auvil*, 92 F.3d at 230 ("[Because a]n agent cannot create his own authority to represent a principal, it follows that an agent's statements that he has such authority cannot, without more, entitle a third party to rely on his agency." (citations omitted) (cleaned up)); Restatement (Third) of Agency § 3.03 cmt. b (noting that apparent agency must involve the manifestation of a principal). Tellingly, Sing Fuels could not confirm whether Medmar was the corporate entity paying for the previous bunker deliveries that it purportedly supplied. *See* J.A. 499–500. And then, Sing Fuels never established any firm connection between Medmar, Windrose Marine, and M.A.C. Shipping. So we are left wanting for a manifestation from Medmar. Under these circumstances, we believe the district court's decision against apparent authority is well-grounded in the record, particularly with a glaring absence of proof and primarily relying on only witness testimony before it. *See Tramp Oil & Marine, Ltd. v. M/V "Mermaid I"*, 805 F.2d 42, 45 (1st Cir. 1986) (holding that a broker of bunkers was not entitled to a maritime lien when "no relationship existed" between the broker and a vessel, and "neither the vessel owner nor the charterer even knew of [the broker]").

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credibility or the weighing of conflicting evidence during a bench trial, such findings are entitled to even greater deference." (citation omitted)).

In a final attempt to procure its maritime lien, Sing Fuels heavily relies on *Marine Fuel Supply & Towing, Inc. v. M/V Ken Lucky*, 869 F.2d 473 (9th Cir. 1988), but that case is readily distinguishable. In *M/V Ken Lucky*, the Ninth Circuit held that a physical supplier was entitled to a maritime lien when *the parties agreed* that the fuel order originated from a sub-charterer and that sub-charterer possessed authority to legally bind the vessel. *Id.* at 476–77. Contrary to *M/V Ken Lucky*, Autumn Harvest does not make that crucial factual admission, which is evident by the parties vigorously contesting its existence in this case. We are not in the terrain of *M/V Ken Lucky* and join our sister circuits in distinguishing it on this narrow basis. *See Bunker Holdings*, 906 F.3d at 845–46 (distinguishing *M/V Ken Lucky* due to the factual admission and concessions); *Valero*, 893 F.3d at 295 (same); *Barcliff*, 876 F.3d at 1068–69 (same).

In short, based on the limited facts before it, the district court's finding that Mylonakis was not an apparent or presumed agent of Medmar is not clearly erroneous.[19]

IV.

"[M]aritime liens are to be strictly construed, i.e., they are not to be lightly extended by construction, analogy or inference . . . ." *Atl. & Gulf Stevedores, Inc. v. M/V Grand Loyalty*, 608 F.2d 197, 200–01 (5th Cir. 1979) (citations omitted). Given the limited record

[19] Because we hold that Sing Fuels failed to show an agency relationship justifying a maritime lien, we need not address the propriety of equitable laches. *Marshall v. Meadows*, 105 F.3d 904, 905 n.4 (4th Cir. 1997). We likewise express no view on other forms of legal relief available to Sing Fuels. *Edwards v. Johnston Cnty. Health Dep't*, 885 F.2d 1215, 1225 (4th Cir. 1989).

before us, we cannot conclude that Sing Fuels is entitled to a maritime lien when it has failed to adequately prove an agency relationship between Medmar and Mylonakis or otherwise show how the district court's agency conclusion is clearly erroneous. Therefore, the district court's judgment against Sing Fuels and in the Vessel's favor is

AFFIRMED.

WILKINSON, Circuit Judge, concurring:

I agree with the majority that Sing Fuels has failed to show that Mylonakis, the fuel broker with which it dealt, was acting as an agent of anyone with authority to bind the vessel. It therefore is not entitled to a maritime lien, and I concur in the majority opinion. I write, however, to note the pitfalls that may arise in the future with cases like these, which threaten to destabilize the basic principle of admiralty law that suppliers of necessaries such as bunker fuel must be able to rely on maritime liens to ensure payment.

It is no secret that there are real problems with our supply chains today, much of which have to do with increased difficulties in transporting goods over the oceans. Indeed, "[i]nternational shipping costs have swung far more sharply during the pandemic and amid recent supply-chain disruptions than in the wake of the financial crisis." Lydia O'Neal, *Studies Find Supply-Chain Turmoil Had Unprecedented Economic Impact*, The Wall Street Journal, Jan. 10, 2022. To take just one example, prices for transporting goods from China to the United States have peaked at "more than 50% above the long-term trend for container shipping rates." *Id.* The worst thing we could do would be to add legal complications to those disruptions that already exist as a matter of physical logistics.

It is important, therefore, that those who provide bunker fuel or other necessaries to vessels be paid and be paid promptly. Every incentive should be to encourage prompt payment for fuel that was in fact delivered to the vessel, as it was here. Fuel is what keeps ships running and promises of prompt payment are what keep fuel flowing. The very purpose of a maritime lien, long a part of our admiralty law, is the "desire to protect the ship," which is "peculiarly subject to vicissitudes which would compel abandonment of

vessel or voyage, unless repairs and supplies were promptly furnished." *Piedmont & George's Creek Coal Co. v. Seaboard Fisheries Co.*, 254 U.S. 1, 9 (1920).

To be sure, a maritime lien may only exist where a person provides necessaries to a vessel "on the order of the owner or a person authorized by the owner." 46 U.S.C. § 31342(a). The requirement that the supplier deal either with the owner of the ship or with an agent of the owner is a natural one. Yet there is a risk that the agency requirement will be used by unscrupulous parties as a shell game to evade their contractual duties. As this case illustrates, the maritime economy involves complex interrelations between owners of vessels, charterers, subcharterers, fuel brokers, and suppliers. It would only add to supply-side snarls to require entities providing fuel to unravel the particular relationships, contractual or otherwise, that exist between owners and charterers, or between charterers and the brokers they employ.

Instead, suppliers are entitled to rely on multiple presumptions. As a matter of statutory maritime law, they are entitled to rely on the presumption that a charterer or its agents may bind the vessel on behalf of its owner. *See id.* § 31341(a); *World Fuel Servs. Trading, DMCC v. Hebei Prince Shipping Co.*, 783 F.3d 507, 522 (4th Cir. 2015) (stating that this presumption "can be rebutted only by proof that the seller had actual knowledge that the charterer lacked the ability to bind the vessel as part of the contract for necessaries"). And as a matter of agency law, suppliers are entitled to rely on the principle of apparent authority, whereby a charterer may create an agency relationship by manifesting to suppliers, whether "by written or spoken words or any other conduct," that a broker has the authority to represent it in negotiations or in contractual arrangements for

necessaries. Restatement (Second) of Agency § 27 (1958). So it need not usually be an onerous task for suppliers to obtain maritime liens for fuel delivered to a vessel.

In this particular case, I agree with the majority that Sing Fuels has not met its burden of showing either actual or apparent authority on the part of Mylonakis. As the majority indicates, the supplier in this case did nothing to ascertain an agency relationship between Mylonakis and the owner (Autumn Harvest) or the charterer (Medmar) of the vessel. It did not show this at the time of the transaction nor did it present testimony indicating the existence of such relationship at trial. Nonetheless, I am left with a feeling of unease. It is undisputed that Sing Fuels furnished fuel in Port Elizabeth that enabled the M/V Lila Shanghai to continue on its way. It is undisputed that the vessel consumed this fuel. And it is undisputed that Sing Fuels was never paid for this fuel.

I would not want this ruling to require too much of suppliers. And I hope that courts in the future will review with skepticism attempts to obscure or confuse agency relationships on the part of those who accept necessaries and then resist strenuously any payment for them.